

SURFACE TRANSPORTATION BOARD
WASHINGTON, DC 20423

ENVIRONMENTAL ASSESSMENT

AB-472 (SUB-NO. 1X)
DAKOTA RAIL, INC.– ABANDONMENT EXEMPTION – IN MCLEOD, CARVER, AND
HENNEPIN COUNTIES, MN

BACKGROUND

In this proceeding, the Dakota Rail, Inc. (Dakota Rail) seeks an exemption under 49 USC 10502 from the applicable requirements of 49 USC 10903 in order to abandon its entire 43.9 mile rail line between milepost 24.6, near Wayzata, MN and milepost 68.5 at Hutchinson, MN in McLeod, Carver and Hennepin Counties, MN. A map depicting the rail line in relationship to the area served is appended to the report. If the exemption becomes effective, the railroad will be able to salvage track, ties and other railroad appurtenances, and to dispose of the right-of-way.

CONTACTS AND PROCEDURES

WCL has submitted an environmental report that concludes the quality of the human environment will not be affected significantly as a result of the abandonment or any post-abandonment activities, including salvage¹ and disposition of the right-of-way. The railroad has served the environmental report on a number of appropriate Federal, state, and local agencies as required by the Board's environmental rules at 49 CFR 1105.7(b). We have investigated the record in this proceeding. Also, we have consulted with appropriate agencies and individuals to verify the railroad's report and to obtain additional information and comments regarding the potential environmental effects of the proposed abandonment. Contacts have included Minnesota Department of Natural Resources, State Historical Society of Minnesota, National Geodetic Survey, National Park Service, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Department of Agriculture, Minnesota Coastal Zone Management, and Minnesota Department of Transportation.

ENVIRONMENTAL REVIEW

This Environmental Assessment (EA) evaluates the potential environmental effects that could result from the proposed abandonment. This EA will evaluate the environmental impacts of salvage of the line and how best, if necessary, to mitigate any potential impacts of track

¹Defined as removal of track and ties.

salvage within the right-of-way². The Board's Section of Environmental Analysis (SEA) has prepared this document in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321), the Board's environmental rules (49 CFR Part 1105) and other applicable environmental statutes and regulations.

LAND USE

Dakota Rail considers the proposed abandonment to be consistent with existing land use plans. Adjoining land use between Wayzata to Crystal Lake is primarily residential and from Crystal Lake to Hutchinson, land use is generally rural. In Hutchinson, the line traverses an urban area.

TRANSPORTATION

Dakota Rail advises that the volume of traffic on the line has steadily declined from 720 carloads in 1998 to 176 carloads in 2000, in part because of the poor condition of the line. The line was embargoed May 16, 2000, so the traffic volume for 2000 is not representative. No traffic has moved on the line in 2001. Hence, no existing rail traffic would be diverted to motor carrier.

However, Applicant states that on an annualized basis, there would have been 470 carloads in 2000. Diverting this traffic to motor carriage would have added about 7 trucks per day to the local highway system (based on an average of four truckloads per rail carload). Given the existing highway network, the proposed abandonment should not have an adverse effect on regional or local transportation systems or patterns. Further, Applicant believes that projected traffic is insufficient to justify the rehabilitation required on the line. Dakota Rail transported plastic, lumber, scrap steel and chemicals over the line prior to its embargo.

The Minnesota Department of Transportation, Office of Freight, Railroads, and Waterways (MDOT) objects to the proposed abandonment because, among other reasons, Dakota Rail embargoed the rail line and then lifted the embargo, but still refused to provide service along the line within the last two-year period. Moreover, Dakota Rail's petition that traffic now moves on a permit-only basis is due to the \$700.00 per car surcharge imposed by Dakota Rail that puts shippers at such an extreme economic disadvantage that they could not possibly ship using Dakota Rail. Finally, MDOT states that even if a shipper actually wished to ship under this economic hardship, Dakota Rail has neither locomotives nor train crews on location to provide service.

Norwesco, Inc. (Norwesco), a shipper, believes that there is a legitimate public need for continuation of rail service on the line. Historically, Norwesco has received shipments of resin by rail at St. Bonifacius, and has shipped plastic tanks outbound by rail from that point. Norwesco accounted for 113 carloads in 1998, 117 carloads in 1999, and 81 carloads in the first 4 1/2 months of 2000. Norwesco states that its rail traffic in 2000 would have amounted to 216

²The SEA notes here that the Board's jurisdiction for imposition of mitigating conditions is limited to activities and impacts with railroad the right-of-way.

carloads on an annualized basis. Norwesco advised that it was precluded from using the rail line after May 16, 2000 because of an embargo imposed by Dakota Rail. Norwesco further states that use of the line has been substantial and growing, and would have continued but for Dakota Rail's shut-down of rail service.

Air and Noise Quality

Standards

The Board has established air quality and noise level threshold levels set forth at 49 CFR 1105.7 (e)(5)(ii) and (e)(6). These thresholds are guidelines that are considered, along with other supporting information, to determine whether the air pollution and noise levels generated by rail traffic diverted to alternative modes warrant detailed analysis. The applicable threshold level for an attainment area when assessing air pollution is an increase in rail traffic of a least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains per day on any segment of the rail line, or an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment.

Air

The affected area is in attainment with national ambient air quality standards. Abandonment and salvage should not adversely impact local or regional air quality.

Noise

The major noise source is traffic on local roads. Train horn and wayside noise (that is, the noise generated by the operation of the train rather than by the sounding of the horn) would be eliminated. Noise disturbances during salvage operations would be short-term. The noise generated from salvaging equipment would generally be less than from trains that currently travel over this line.

Solid and Hazardous Waste

SEA consulted with the Minnesota Pollution Control Board (Mn PCB) regarding any past spills and discharge of potentially hazardous materials along the line. Dakota Rail certifies that they are not aware of any contaminants that will pose existing or future concerns to the salvage and future disposition of the right-of-way. The Mn PCB has not completed its review of the project.

Biological Resources

The US Fish and Wildlife Service (USFWS) determined that it had no objections to this project and no further action on the project was required by the 1973 Endangered Species Act, as amended.

Cultural and Historic Resources

SEA recommends that if abandonment authority is granted, the railroad should protect surveying benchmarks, monumentation and mapping information for the segment until the

National Geodetic Society has evaluated its historic value. SEA recommends a condition to allow the National Geodetic Society 90 days from the issuance of any decision granting abandonment authority in this proceeding to survey the line for any historical benchmarks or monumentation.

The State Historical Society of Minnesota (Historical Society) has reviewed the proposed abandonment as required for compliance with Section 106 of the National Historic Preservation Act. The Historical Society advises that there are no historical structures listed in the National Register of Historic Places (National Register) within the area of potential effect of the proposed undertaking. Furthermore, the Historical Society is not aware of any structures that may be eligible for the National Register in this area. However, the Historical Society states that it does not appear that the historical significance of the line itself has been evaluated. If the line should be found to be significant, individual buildings and/or structures along the line could be contributing elements to such a property. Under these circumstances, we recommend that Dakota Rail retain its interest in and take no steps to alter the historic integrity of the line and its structures until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.

CONDITIONS

The SEA recommends that the following conditions be placed on any decision granting abandonment authority:

1. The Historical Society states that it does not appear that the historical significance of the line itself has been evaluated. If the line should be found to be significant, individual buildings and/or structures along the line could be contributing elements to such a property. Under these circumstances, we recommend that Dakota Rail retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line until completion of the Section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f.
2. Dakota Rail shall notify the National Geodetic Survey prior to any salvage activities that will disturb or destroy any geodetic markers on the right-of-way. Dakota Rail will allow the National Geodetic Society 90 days from the issuance of any decision granting abandonment authority in this proceeding to survey the line for any historical benchmarks or monumentation.
3. SEA consulted with the Minnesota Pollution Control Board (Mn PCB) regarding any past spills and discharge of potentially hazardous materials along the line. Dakota Rail certifies that they are not aware of any contaminants that will pose existing or future concerns to the salvage and future disposition of the right-of-way. The Mn PCB has not completed its review of the project. Under these circumstances, we recommend that the Dakota Rail consult with the Mn PCB prior to salvaging the line.

CONCLUSIONS

Based on the information provided from all sources to date, we conclude that, as currently proposed, abandonment of the line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed abandonment would include denial (and therefore no change in operations), discontinuance of service without abandonment, and continued operation by another operator. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

PUBLIC USE

Following abandonment and salvage of the rail line, the right-of-way may be suitable for other public use. A request containing the requisite four-part showing for imposition of a public use condition (49 CFR 1152.28) must be filed with the Board and served on the railroad within the time specified in the Federal Register notice.

The Minnesota Department of Natural Resources (MDNR) believes it would be in the public interest to preserve this rail corridor for future public use and are supportive of this concept. Additionally, MDNR has offered its assistance, if need. While the right-of-way could be used as a recreational trail, several local jurisdictions oppose public use of the right-of-way as a trail.

It is the Minnesota Department of Transportation's (MnDOT) position that the public must be given a reasonable opportunity to evaluate and acquire the Dakota Rail corridor. MnDOT is working with the Hennepin County Regional Railroad Authority, Carver County Regional Railroad Authority and McLeod County Regional Authority to acquire the corridor. MnDOT requests that the Board find that the line of railroad between Hutchinson, Minnesota and Wayzata, Minnesota is suitable for public use as a public transportation corridor without reduction in size and width. In addition, MnDOT requests that the Board impose a public use condition for a full 180 days, pursuant to 49 USC 10905 and 49 CFR 1152.28.

TRAILS USE

A request for a notice of interim trail use (NITU) is due to the Board, with a copy to the railroad, within 10 days of publication of the notice of the petition for exemption in the Federal Register. Nevertheless, the Board will accept late-filed requests as long as it retains jurisdiction to do so in a particular case. This request must comply with the Board's rules for use of rights-of-way as trails (49 CFR 1152.29).

Several communities adjoining the line have adopted a resolution in support of the conversion of the Dakota Rail Railroad Corridor to a regional recreational trail.

The 1995 Trails Act and the Board's Environmental Review

The Trails Act, 16 U.S.C. 1247(d), gives interested parties the opportunity to negotiate voluntary agreements to use, for recreational trails, railroad rights-of-way that otherwise would be abandoned. The Act is intended to preserve railroad rights-of-way for future railroad use. Many railroads do not own the land on which their track lies. Rather, they have easements over the land of adjoining property owners. Unless those easements are converted to a trail under the Trails Act, the railroad's easement rights are extinguished, and the land may revert to the adjoining property owners when the Board authorizes the abandonment of the line.

Under the Trails Act and the Board's implementing procedures (49 CFR 1152.29), a state or local government or private organization can request a trail condition³ (known as a CITU) to begin the trail use process on a line approved for abandonment if the rail sponsor agrees to railbanking and provides a statement of willingness to assume responsibility for managing the right-of-way, for any legal liability arising out of its use, and for the payment of taxes. If the railroad agrees to negotiate, and no offer of financial assistance to continue rail freight service on the line is received, the Board will impose a CITU, which gives the rail sponsor time to negotiate an agreement with the railroad for interim trail use/railbanking. The Board has no involvement in the negotiations and does not analyze, approve, or set the terms of trail use agreements. The Board is not authorized to regulate activities over the actual trail. In short, the Board's jurisdiction under the Trails Acts is ministerial.

The Board does not conduct an environmental review of a potential conversion to interim rail use/railbanking because it does not exercise sufficient Federal control to render Rails-to-Trails conversions "major Federal actions" under NEPA.

PUBLIC ASSISTANCE

The Board's Office of Public Services (OPS) responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact OPS directly at (202) 565-1592, or mail inquiries to Surface Transportation Board, Office of Public Services, Room 848, Washington, DC 20423.

COMMENTS

If you wish to file comments regarding this environmental assessment, you should send an **original and two copies** to Vernon A. Williams, Office of the Secretary, Room 711, Washington, DC 20423, to the attention of Phillis Johnson-Ball, who prepared this environmental assessment. **Please refer to Docket No. AB-472 (Sub No. 1X) in all correspondence addressed to the Board.** If you have questions regarding this environmental assessment, you should contact Phillis Johnson-Ball at (202) 565-1530.

Date made available to the public: 10/12/01.

Comment due date: 11/12/01

By the Board, Victoria Rutson Chief, Section of Environmental Analysis.

Vernon A. Williams
Secretary

Attachment

³Applicable in abandonments processed under 49 U.S.C. 10903.

MAP NEEDS TO BE SCANNED.